Supreme Court, U.S.
FILED
OCT 31 1995
OFFICE OF THE CLERK

95-541

No.

IN THE SUPREME COURT
OF THE UNITED STATES
OCTOBER TERM 1995

EX PARTE: CHARLES EUGENE CARPENTER,

Petitioner,

IN RE: T. TRAVIS MEDLOCK, ATTORNEY GENERAL FOR THE STATE OF SOUTH CAROLINA,

Respondent,

vs.

3.75 ACRES OF REAL PROPERTY LOCATED IN MARLBORO COUNTY, SOUTH CAROLINA, AND ALL BUILDINGS, APPURTENANCES, AND IMPROVEMENTS THEREON, DEEDED TO DAVID AND VAUNICE REEP ON JANUARY 22, 1982 AND ON JUNE 1, 1982, AND TO ANOTHER PARTY IN APPROXIMATELY 1986, BUT NO DEED WAS RECORDED,

Defendants.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE
UNITED STATES FROM THE SUPREME COURT OF
THE STATE OF SOUTH CAROLINA

**BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI**

CHARLES MOLONY CONDON
Attorney General
* DONALD J. ZELENKA
Assistant Deputy Attorney General
JOHN S. SIMMONS
Chief, State Grand Jury
ANNE HUNTER YOUNG
Assistant Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3693

ATTORNEYS FOR RESPONDENT
* Counsel of Record

41

## BRIEF OF RESPONDENT

Respondent, State of South Carolina, hereby submits this Brief in Opposition to the Petition for Writ of Certiorari to the Supreme Court of the United States.

## QUESTIONS PRESENTED

I.

Whether the Double Jeopardy issue should be considered by the United States Supreme Court in a Writ of Certiorari where Petitioner failed to raise the Double Jeopardy issue before the trial court and the South Carolina Supreme Court refused to rule upon the issue, and if Petitioner's Double Jeopardy issue is appropriate for review, whether the forfeiture cause of action violated the Double Jeopardy Clause of the Fifth Amendment?

II.

Whether the Excessive Fines issue should be considered by the United States

Supreme Court in a Writ of Certiorari where Petitioner failed to raise the Excessive Fines issue before the trial court and the South Carolina Supreme Court refused to rule upon the issue, and if Petitioner's Excessive Fines issue is appropriate for review, whether the forfeiture cause of action violated the Excessive Fines Clause of the Eighth Amendment?

## TABLE OF CONTENTS

BRIEF OF RESPONDENT . . . . . i

QUESTIONS PRESENTED . . . . . i

TABLE OF AUTHORITIES . . . . . v

OPINION BELOW . . . . . 1

STATEMENT OF THE CASE . . . . . 2

SUMMARY OF THE ARGUMENTS . . . . . 15

ARGUMENT

I. PETITIONER'S DOUBLE JEOPARDY ISSUE SHOULD NOT BE CONSIDERED BY THE UNITED STATES SUPREME COURT IN A WRIT OF CERTIORARI WHERE PETITIONER FAILED TO RAISE THE DOUBLE JEOPARDY ISSUE BEFORE THE TRIAL COURT AND THE SOUTH CAROLINA SUPREME COURT REFUSED TO RULE UPON THE ISSUE, AND IF PETITIONER'S DOUBLE JEOPARDY ISSUE IS APPROPRIATE FOR REVIEW, THE FORFEITURE CAUSE OF ACTION DOES NOT VIOLATE THE DOUBLE JEOPARDY CLAUSE OF THE FIFTH AMENDMENT . . . . . 18

A. PETITIONER FAILED TO RAISE THE DOUBLE JEOPARDY ISSUE BEFORE THE TRIAL COURT AND THE SOUTH CAROLINA SUPREME COURT REFUSED TO RULE UPON THE ISSUE. . . . . .18

B. IF PETITIONER'S DOUBLE JEOPARDY ISSUE IS APPROPRIATE FOR REVIEW, THE FORFEITURE CAUSE OF ACTION

DOES NOT VIOLATE THE DOUBLE JEOPARDY CLAUSE OF THE FIFTH AMENDMENT . . . . 20

II. PETITIONER'S EXCESSIVE FINES ISSUE SHOULD NOT BE CONSIDERED BY THE UNITED STATES SUPREME COURT IN A WRIT OF CERTIORARI WHERE PETITIONER FAILED TO RAISE THE EXCESSIVE FINES ISSUE BEFORE THE TRIAL COURT AND THE SOUTH CAROLINA SUPREME COURT REFUSED TO RULE UPON THE ISSUE, AND IF PETITIONER'S EXCESSIVE FINES ISSUE IS APPROPRIATE FOR REVIEW, THE FORFEITURE CAUSE OF ACTION DOES NOT VIOLATE THE EXCESSIVE FINES CLAUSE OF THE EIGHTH AMENDMENT. . . . . 27

A. PETITIONER FAILED TO RAISE THE EXCESSIVE FINES ISSUE BEFORE THE TRIAL COURT AND THE SOUTH CAROLINA SUPREME COURT REFUSED TO RULE UPON THE ISSUE. . . . . 27

B. IF PETITIONER'S EXCESSIVE FINES ISSUE IS APPROPRIATE FOR REVIEW, THE FORFEITURE CAUSE OF ACTION DOES NOT VIOLATE THE EXCESSIVE FINES CLAUSE OF THE EIGHTH AMENDMENT. . . . . 28

CONCLUSION . . . . . 33

## TABLE OF AUTHORITIES

**Cases:**


Austin v. U.S., ___ U.S. ___, 113 S.Ct. 2801, 125 L.Ed.2d 488 (1993) . . . . . 22, 23, 31

Blockburger v. U.S., 284 U.S. 299, 52 S.Ct. 180, 76 L.Ed.2d 306 (1932) . . . . . 22

Dawkins v. U.S., 883 F.Supp. 83 (E.D. Va. 1995) . . . . . 24, 32

Degenhart v. Knights of Columbus, ___ S.C. ___, 420 S.E.2d 495 (1992) . . . . 19, 28

Goddard v. Fairways Development General Partnership, ___ S.C. ___, 426 S.E.2d 828 (Ct. App. 1993). . . . . 19, 28

Grady v. Corbin, 495 U.S. 508, 110 S.Ct. 2084, 109 L.Ed.2d 556 (1990) . . . . . 21

Jennings v. Dargan, ___ S.C. ___, 417 S.E.2d 646 (Ct. App. 1992); reh'g denied, opinion amended . . . 19, 28

Nichols v. Amalgamated Clothing And Textile Workers Union, 305 S.C. 323, 408 S.E.2d 237 (1991), cert. denied ___ U.S. ___, 112 S.Ct. 873, 116 L.Ed.2d 778 (1992) . . . 19, 28

North Carolina v. Pearce,
395 U.S. 711, 89 S.Ct. 2072,
23 L.Ed.2d 656 (1969) . . . . . 21

Price v. Pickens County,
___ S.C. ___, 416 S.E.2d 666
(Ct. App. 1992) . . . . . 19, 28

Soaper v. Hope Industries, Inc.,
306 S.C. 531, 413 S.E.2d 38
(Ct. App. 1992); cert. granted
in part, cert. denied in part,
aff'd as modified, ___ S.C ___,
424 S.E.2d 493 (1992) . . . 19, 28

Talley v. S.C. Higher Educ.
Tuition Grants Committee,
289 S.C. 483,
347 S.E.2d 99 (1986) . . . . . 14

U.S. v. Alexander,
32 F.3d 1231
(8th Cir. 1994) . . . . . 26, 32

U.S. v. Dixon,
___ U.S. ___, 113 S.Ct. 2849,
125 L.Ed.2d 556 (1993) . . . . . 21

U.S. v. Halper,
490 U.S. 435,
109 S.Ct. 1892,
104 L.Ed.2d 487 (1989) . . . . . 23

U.S. v. One Assortment of 89 Firearms,
465 U.S. 354, 104 S.Ct. 1099,
79 L.Ed.2d 361 (1984) . . . . . 23

U.S. v. One Single Family Residence,
13 F.3d 1493 (11th Cir. 1994) . 24

U.S. v. Wild,
47 F.3d 669
(4th Cir. 1995) . . . . . 26, 32

**Statutes:**

**S.C. Code Ann. § 44-53-520 . 13, 20, 29**

**S.C. Code Ann. § 44-53-530 . . . . . 13**

## OPINION BELOW

On March 30, 1993, a forfeiture hearing against Petitioner's subject property was held before the Honorable Edward B. Cottingham. At the conclusion of the March 30, 1993 forfeiture hearing, the trial court provided Petitioner the opportunity to submit sworn affidavits regarding Petitioner's property and proof of how Petitioner had paid for the subject property. Petitioner submitted a sworn affidavit dated April 23, 1993, together with exhibits, to the trial court for consideration. After having considered Petitioner's sworn affidavit dated April 23, 1993, Judge Cottingham issued an Order and Judgment filed on August 11, 1993 with the Clerk of the State Grand Jury which ordered that the Defendant property be forfeited to the State of South Carolina pursuant to Sections 44-53-520 and 44-53-530, Code of Laws of South Carolina

(1976), as amended. The South Carolina Supreme Court affirmed the forfeiture of the Defendant property in Opinion Number 24249, which was filed on May 30, 1995. A Motion for Rehearing was filed on behalf of Petitioner, and the South Carolina Supreme Court issued the Order Denying Rehearing on June 30, 1995.

## STATEMENT OF THE CASE

In March of 1990, the South Carolina State Grand Jury returned two (2) indictments charging Petitioner Charles Eugene Carpenter with two (2) counts of trafficking in cocaine and two (2) counts of trafficking in marijuana. Each count carried a mandatory minimum term of imprisonment of twenty-five (25) years without possibility of parole. After having entered a plea agreement with the State, Petitioner pled guilty on April 7, 1990 to one count of trafficking in cocaine under Indictment 90-GS-47-05-002

and one count of trafficking in marijuana under Indictment 90-GS-47-05-001 before the Honorable Edward B. Cottingham at the Chesterfield County Courthouse. At the April 7, 1990 hearing, Judge Cottingham questioned Petitioner extensively and made a finding of fact on the record, beyond a reasonable doubt, that Petitioner fully and voluntarily entered both the plea agreement and the guilty pleas, and further, that Petitioner understood and waived all constitutional rights.

On June 4, 1990, a sentencing hearing was held regarding Petitioner's aforementioned guilty pleas. At the sentencing hearing, the State contended that Petitioner had not fulfilled his obligations under the plea agreement and so recommended the imposition of consecutive sentences. Judge Cottingham sentenced Petitioner to twenty-five (25) years without parole and imposed a fine of

$200,000 relative to Indictment 90-GS-47-05-002 (the cocaine indictment). Judge Cottingham then ruled that a second sentencing hearing was required in order to enable Petitioner to contest the State's position with regard to the imposition of a consecutive sentence relative to Indictment 90-GS-47-05-001 (the marijuana indictment).

On August 9, 1990, the second sentencing hearing was held before Judge Cottingham relative to the issue of Petitioner's conformance or nonconformance with the terms of the plea agreement. At the conclusion of the second sentencing hearing, Judge Cottingham made a finding of fact, beyond a reasonable doubt, that Petitioner had failed to conform to the terms of the plea agreement. Judge Cottingham then sentenced Petitioner to twenty-five (25) years without parole and imposed a find of $50,000 relative to

Indictment 90-GS-47-05-001 and further ordered that this sentence be run consecutive to Indictment 90-GS-47-05-002. Pursuant to the Order filed on February 3, 1992 with the Clerk of the State Grand Jury, Judge Cottingham made his original order imposing consecutive sentences final and divested his jurisdiction over the criminal matter.

In regard to the forfeiture cause of action involving Petitioner's subject property,[1] a Notice of Lis Pendens was filed on November 30, 1989 with the Marlboro County Clerk of Court's Office against Petitioner's real property more fully described as follows:

DEED OF JANUARY 22, 1982

> All that certain piece, parcel or tract of land lying and being situate in the State of South Carolina, County of Marlboro and being shown and designated on that certain plat entitled

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[1]Petitioner was not the titled owner of record of the Defendant property.

"Compiled May Property"-Sandhill Recreation Club, Inc.-prepared by John M. Jackson, III., R.L.S. and dated June 4, 1981. Said plat being recorded in the Office of the Clerk of Court for Marlb o County in Plat Book 36 at Page 64.

The property described above was conveyed by C. R. May III and A. Matheson May to **David Reep** and **Vaunice Reep** by Deed of January 22, 1982, recorded Deed Book Volume 186, Page 217.

DEED OF JUNE 1, 1982

All that certain piece, parcel or tract of land containing 2 acres, more or less, lying and being situate in the County of Marlboro, State of South Carolina, shown and designated on that certain plat entitled "Map of Land, Property of Sandhills Recreation Club, Inc. to be conveyed to David Reep" prepared by Carl Maness, L.S., dated May 20, 1982, and recorded in the Office of the Clerk of Court for Marlboro County in Plat Book 37, Page 31.

For a more particular description as to courses and distances, metes and bounds, reference in craved to the aforementioned plat.

The above property is a portion of that property conveyed to Sandhill Recreation Club, Inc. by Deed of Charles R. May, III,

et al., recorded in Deed Book 181, Page 124 in the Office of the Clerk of Court for Marlboro County, South Carolina.

The property is sold subject to Restrictions recorded in Deed Book 190, Page 4, recorded May 31, 1982, in the Office of the Clerk of Court for Marlboro County.

It is understood and agreed that no cattle, hogs, horses or other livestock, including poultry, shall be maintained or kept on the aforementioned tract.

The property described above was conveyed by Sandhill Recreation Club, Inc. by its President, William J. Weatherly to **David Reep** and **Vaunice Reep** by Deed of June 1, 1982, recorded Deed Book Volume 190, Page 23.

The property described above was subsequently conveyed to another party in 1986 but the Deed of Conveyance has not been recorded.

On December 15, 1989, an Affidavit For Seizure was filed with the Clerk of the State Grand Jury for the purposes of documenting Petitioner's participation in the purchase, sale and distribution of cocaine and marijuana and providing the subsequent

basis of Petitioner's aforementioned property being subject to seizure and forfeiture. This Affidavit For Seizure provided information that Petitioner's subject property was purchased with proceeds derived from illegal drug activity and that Petitioner had bragged about making three to four million dollars by selling illegal drugs. (Affidavit for Seizure, R.pp.6-8). Having considered the facts set forth in the aforementioned Affidavit For Seizure, the Honorable J. Ernest Kinard, Jr. signed a Seizure Warrant, which was filed on December 15, 1989 with the Clerk of the State Grand Jury, authorizing the seizure of Petitioner's subject property as above described. The State further filed on December 15, 1989 a Summons and Complaint For Forfeiture In Rem under Civil Action Number 89CP4705033 with the Clerk of the State Grand Jury against Petitioner's

subject property.[2] At the request of Petitioner's attorney and with the consent of the State, an Order staying the forfeiture cause of action under Civil Action Number 89CP4705033 was issued by Judge Cottingham and filed on April 30, 1990 with the Clerk of the State Grand Jury. An Order of Dismissal involving Civil Action Number 89CP4705033 was filed on January 6, 1992 with the Clerk of the State Grand Jury as a result of a new Summons and Complaint For Forfeiture In Rem having been filed by the State under Civil Action Number 91CP4705104 against Petitioner's subject property.

The Summons and Complaint For Forfeiture In Rem under Civil Action Number 91CP4705104 was filed on December 20, 1991 with the Clerk of the State Grand Jury against Petitioner's subject

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[2]South Carolina has not enacted criminal forfeiture statutes for drug violations.

property, being the same property as previously described in the Notice of Lis Pendens and Complaint For Forfeiture In Rem under Civil Action Number 89CP4705033. A Counter Return Against Complaint For Forfeiture under Civil Action Number 91CP4705104 designating Non-Jury was signed on January 17, 1992 by Petitioner and returned to the State. A Petition For A Rule To Show Cause was filed on February 12, 1993 on behalf of the State praying that Petitioner show cause as to why an Order should not be issued forfeiting the Defendant property, which was seized pursuant to the aforementioned Seizure Warrant. A Rule To Show Cause was issued by Judge Cottingham and filed on February 12, 1993 with the Clerk of the State Grand Jury requiring Petitioner, and others with interests in the Defendant property, to appear on March 25, 1993 at the Marlboro County Courthouse and to show cause why an

Order should not be issued forfeiting the Defendant property. A Petition For Appointment Of Guardian Ad Litem And Order was also filed on February 12, 1993 by the State in order for a Guardian ad Litem to be appointed to represent Petitioner, an imprisoned person, and Charles G. Vaughan, Jr., Esquire, was duly appointed guardian ad litem to represent the interests of Petitioner. Subsequently, an Amended Rule To Show Cause was issued by Judge Cottingham and filed on March 3, 1993 with the Clerk of the State Grand Jury requiring Petitioner, and others with interests in the Defendant property, to appear on March 22, 1993, or as soon thereafter as the matters might be heard, and to show cause why an Order should not be issued forfeiting the Defendant property.

Pursuant to the Amended Rule to Show Cause, a forfeiture hearing was held on

March 30, 1993 before Judge Cottingham at the Marlboro County Courthouse. Petitioner was present for the hearing and was accompanied by his guardian ad litem, Charles G. Vaughan, Jr., Esquire. Petitioner was not represented by an attorney at the March 30, 1993 forfeiture hearing. Petitioner informed the trial court that Petitioner wanted an attorney to represent him at the hearing. The trial court determined that Petitioner had been aware of the pending matter, was duly notified of the proceedings, and had been given adequate opportunity to obtain legal representation.[3] (R.p.85, line 6 - p.88, line 5). At the conclusion of the March 30, 1993 forfeiture hearing, the trial court provided Petitioner the opportunity to submit sworn affidavits regarding

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[3]Appellant had further requested a jury trial for the first time at the March 30, 1993 hearing, and the trial court denied Appellant's request. (R.p.90, line 4 - p.91, line 19).

Petitioner's property and proof of how Petitioner had paid for the subject property. (R.p.148, lines 6-8, 19-25; R.p.150, lines 5-16; R.p.151, lines 17-22; R.p.152, line 18 - p.153, line 2). Petitioner submitted a sworn affidavit dated April 23, 1993, together with exhibits, to the trial court for consideration. After having considered Petitioner's sworn affidavit dated April 23, 1993, Judge Cottingham issued an Order and Judgment filed on August 11, 1993 with the Clerk of the State Grand Jury which ordered that the Defendant property be forfeited to the State of South Carolina pursuant to Sections 44-53-520 and 44-53-530, Code of Laws of South Carolina (1976), as amended. Petitioner appealed to the South Carolina Supreme Court the Order and Judgment filed on August 11, 1993 with the Clerk of the State Grand Jury under Civil Action Number 91CP4705104.

The South Carolina Supreme Court affirmed the trial court's ruling as set forth in the Order and Judgment filed on August 11, 1993. In affirming the trial court's ruling, the South Carolina Supreme Court refused to consider issues raised for the first time on appeal; among the issues not raised at the trial court level were those involving the Double Jeopardy Clause of the Fifth Amendment and the Excessive Fines Clause of the Eighth Amendment. The South Carolina Supreme Court cited Talley v. S.C. Higher Educ. Tuition Grants Committee, 289 S.C. 483, 347 S.E.2d 99 (1986), for the proposition that issues not raised below are not preserved for appeal. Accordingly, the South Carolina Supreme Court followed stringent waiver rules and refused to rule on the Double Jeopardy and Excessive Fines issues, which were raised for the first time on appeal. A Motion for Rehearing

was filed on behalf of Petitioner, and the South Carolina Supreme Court issued the Order Denying Rehearing on June 30, 1995. Petitioner subsequently filed the Petition for a Writ of Certiorari to the Supreme Court of the United States on September 28, 1995. The Supreme Court of the United States is now being petitioned to rule upon the Double Jeopardy and Excessive Fines issues for the first time through a Writ of Certiorari.

## SUMMARY OF THE ARGUMENTS

Petitioner failed to raise the Double Jeopardy and Excessive Fines issues at the trial court level, and the South Carolina Supreme Court refused to rule upon the two issues for the first time on appeal. Petitioner is now seeking review of the Double Jeopardy and Excessive Fines issues through the Petition for a Writ of Certiorari to the Supreme Court of the United States. Although Petitioner waived

the right to raise these two issues on appeal, a review of the Double Jeopardy Clause of the Fifth Amendment and the Excessive Fines Clause of the Eighth Amendment in connection with the criminal and civil forfeiture proceedings against Petitioner indicates that no violations occurred. The circumstances involving the simultaneous pursuit by the State of South Carolina of criminal and civil forfeiture matters against Petitioner fall within the contours of a single, coordinated prosecution. The South Carolina Legislature has authorized cumulative punishment under criminal and civil statutes for a single course of conduct. Thus, the Double Jeopardy Clause does not bar separate criminal and civil forfeiture proceedings. Furthermore, Petitioner's subject property was forfeited on the proceeds theory inasmuch as it constituted, and was derived from, drug

proceeds. The forfeiture of proceeds obtained as a result of illegal drug activities is not subject to the excessiveness challenge under the Excessive Fines Clause of the Eighth Amendment.

## ARGUMENT

### I.

**PETITIONER'S DOUBLE JEOPARDY ISSUE SHOULD NOT BE CONSIDERED BY THE UNITED STATES SUPREME COURT IN A WRIT OF CERTIORARI WHERE PETITIONER FAILED TO RAISE THE DOUBLE JEOPARDY ISSUE BEFORE THE TRIAL COURT AND THE SOUTH CAROLINA SUPREME COURT REFUSED TO RULE UPON THE ISSUE, AND IF PETITIONER'S DOUBLE JEOPARDY ISSUE IS APPROPRIATE FOR REVIEW, THE FORFEITURE CAUSE OF ACTION DOES NOT VIOLATE THE DOUBLE JEOPARDY CLAUSE OF THE FIFTH AMENDMENT.**

A. Petitioner failed to raise the Double Jeopardy issue before the trial court and the South Carolina Supreme Court refused to rule upon the issue.

Petitioner failed to raise the Double Jeopardy issue before the trial court in regard to the forfeiture cause of action under Civil Action Number 91CP4705104. As a result, the trial court was not afforded the opportunity to rule upon the Double Jeopardy issue. The South Carolina Supreme Court has consistently held that

## ARGUMENT

I.

issues which are neither presented to nor passed upon by the trial judge may not be raised for the first time on direct appeal. Degenhart v. Knights of Columbus, ___ S.C. ___, 420 S.E.2d 495 (1992); Nichols v. Amalgamated Clothing And Textile Workers Union, 305 S.C. 323, 408 S.E.2d 237 (1991), cert. denied ___ U.S. ___, 112 S.Ct. 873, 116 L.Ed.2d 778 (1992); Goddard v. Fairways Development General Partnership, ___ S.C. ___, 426 S.E.2d 828 (Ct. App. 1993); Price v. Pickens County, ___ S.C. ___, 416 S.E.2d 666 (Ct. App. 1992); Jennings v. Dargan, ___ S.C. ___, 417 S.E.2d 646 (Ct. App. 1992); reh'g denied, opinion amended; Soaper v. Hope Industries, Inc., 306 S.C. 531, 413 S.E.2d 38 (Ct. App. 1992); cert. granted in part, cert. denied in part, aff'd as modified, ___ S.C ___, 424 S.E.2d 493 (1992). Petitioner thus waived the right to raise the Double Jeopardy issue

for the first time on appeal, and the South Carolina Supreme Court refused to rule upon the issue. (Appendix A p. 3).

B. If Petitioner's Double Jeopardy issue is appropriate for review, the forfeiture cause of action does not violate the Double Jeopardy Clause of the Fifth Amendment.

Even assuming arguendo that the Court should examine the Double Jeopardy issue, the forfeiture cause of action under Civil Action Number 91CP4705104 did not violate the Double Jeopardy Clause by imposing multiple punishments or prosecutions for the same offense against Petitioner. Pursuant to Section 44-53-520, et. seq., Code of Laws of South Carolina (1976), as amended, the State brought a separate in rem civil forfeiture cause of action against Petitioner's subject property alleging that it was purchased with drug proceeds and was used to facilitate drug

activities. The State's forfeiture cause of action under Civil Action Number 91CP4705104 contained necessary elements for forfeiture which were not contained in Petitioner's two criminal convictions.

The Double Jeopardy Clause of the Fifth Amendment to the United States Constitution guarantees that no person shall "be subject for the same offense to be twice put in jeopardy of life or limb." This guarantee applies to both successive punishments and to successive prosecutions for the same offense. North Carolina v. Pearce, 395 U.S. 711, 89 S.Ct. 2072, 23 L.Ed.2d 656 (1969). In U.S. v. Dixon, ___ U.S. ___, 113 S.Ct. 2849, 125 L.Ed.2d 556 (1993), the United States Supreme Court overruled the "essential elements test" established in Grady v. Corbin, 495 U.S. 508, 110 S.Ct. 2084, 109 L.Ed.2d 556 (1990). Consequently, the Court must apply the "same elements test" or

"Blockburger" test in order to determine whether a subsequent prosecution is barred by the Double Jeopardy Clause. See Blockburger v. U.S., 284 U.S. 299, 52 S.Ct. 180, 76 L.Ed.2d 306 (1932). In applying the "same elements test", an inquiry must be made as to whether or not such offense contains an element not contained in the other. If not, they are the same offense within the Double Jeopardy Clause's meaning and double jeopardy bars subsequent prosecution as punishment.

Petitioner contends that the forfeiture of his subject property constitutes punishment for the same criminal offenses to which he has been convicted. Petitioner cites Austin v. U.S., ___ U.S. ___, 113 S.Ct. 2801, 125 L.Ed.2d 488 (1993), to support his contention that the Double Jeopardy Clause bars the forfeiture. The State submits,

however, that Austin ruled solely on the issue as to whether or not the Excessive Fines Clause of the Eighth Amendment applies to in rem civil forfeiture proceedings. The court in Austin did not consider the Double Jeopardy Clause in regard to in rem civil forfeiture proceedings. Further, the Double Jeopardy Clause has been held not to apply in civil forfeiture causes of action where forfeitures are properly characterized as remedial in nature. U.S. v. One Assortment of 89 Firearms, 465 U.S. 354, 104 S.Ct. 1099, 79 L.Ed.2d 361 (1984).

The Double Jeopardy Clause of the Fifth Amendment does not prohibit a civil forfeiture proceeding and sanction which may be characterized as remedial. U.S. v. Halper, 490 U.S. 435, 109 S.Ct. 1892, 104 L.Ed.2d 487 (1989). The Halper decision does not prevent the State from seeking and obtaining the civil forfeiture of

Petitioner's property as well as the criminal convictions of Petitioner. The forfeiture of Petitioner's property did not constitute punishment under the Double Jeopardy Clause, because Petitioner's property was forfeited on the proceeds theory. Consequently, Petitioner was not deprived of anything to which Petitioner was legally entitled. Dawkins v. U.S., 883 F.Supp. 83 (E.D. Va. 1995). Furthermore, Petitioner's separate civil forfeiture proceeding and separate criminal prosecutions did not violate the Double Jeopardy Clause; the simultaneous pursuit of these matters fell within the contours of a single, coordinated prosecution. U.S. v. One Single Family Residence, 13 F.3d 1493 (11th Cir. 1994).

Petitioner made millions of dollars from illegal drug transactions. (Affidavit for Seizure, R.p.8; R.p.126, line 25 - p.127, line 2). Petitioner

purchased the subject property for $7,500.00 in cash and had the title to the property transferred to a designated third person's name. Petitioner made improvements to the subject property at an estimated value ranging from $25,000 to $50,000. (R.p.109, line 3 - p.116, line 24). The trial court provided Petitioner the opportunity to submit sworn affidavits as to what legitimate sources of income were used towards the purchase and improvement of the subject property. (R.p.148, lines 19-25; R.p.150, lines 5-16; R.p.151, lines 17-22; R.p.152, line 18 - p.153, line 2). After having considered Petitioner's sworn affidavit dated April 23, 1993, the trial court ordered that the subject property be forfeited to the State of South Carolina.

The forfeiture of Petitioner's property was remedial in nature, because the forfeiture of proceeds cannot be

considered punishment. U.S. v. Alexander, 32 F.3d 1231 (8th Cir. 1994). Petitioner was placed in a position as before the criminal activity began and was simply separated from the fruits of the drug trade. U.S. v. Wild, 47 F.3d 669 (4th Cir. 1995). The forfeiture allowed the State to sell Petitioner's property and to offset expenses incurred by the State's extensive investigation of Petitioner's illegal drug activities. Furthermore, the value of Petitioner's property did not exceed an amount deemed as punishment, setting aside the fact that the subject property was purchased and improved with drug proceeds from Petitioner's criminal drug trade.

## II.

**PETITIONER'S EXCESSIVE FINES ISSUE SHOULD NOT BE CONSIDERED BY THE UNITED STATES SUPREME COURT IN A WRIT OF CERTIORARI WHERE PETITIONER FAILED TO RAISE THE EXCESSIVE FINES ISSUE BEFORE THE TRIAL COURT AND THE SOUTH CAROLINA SUPREME COURT REFUSED TO RULE UPON THE ISSUE, AND IF PETITIONER'S EXCESSIVE FINES ISSUE IS APPROPRIATE FOR REVIEW, THE FORFEITURE CAUSE OF ACTION DOES NOT VIOLATE THE EXCESSIVE FINES CLAUSE OF THE EIGHTH AMENDMENT.**

A. Petitioner failed to raise the Excessive Fines issue before the trial court and the South Carolina Supreme Court refused to rule upon the issue.

Petitioner failed to raise the Excessive Fines issue before the trial court in regard to the forfeiture cause of action under Civil Action Number 91CP4705104. Consequently, the trial court was not afforded the opportunity to rule upon whether or not the Excessive Fines Clause of the Eighth Amendment was violated by the forfeiture cause of

action. The South Carolina Supreme Court has consistently held that issues which are neither presented to nor passed upon by the trial judge may not be raised for the first time on direct appeal. Degenhart, supra; Nichols, supra; Goddard, supra; Price, supra; Jennings, supra; Soaper, supra. Petitioner thus waived the right to raise the Excessive Fines issue for the first time on appeal, and the South Carolina Supreme Court refused to rule upon the issue. (Appendix A p. 3).

B. If Petitioner's Excessive Fines issue is appropriate for review, the forfeiture cause of action does not violate the Excessive Fines Clause of the Eighth Amendment.

Even assuming arguendo that the Court should examine the Excessive Fines issue, the forfeiture cause of action under Civil Action Number 91CP4705104 did not violate the Eighth Amendment to the United States

Constitution by creating an excessive civil sanction in relation to Petitioner's criminal sentences. The State brought a civil forfeiture cause of action against Petitioner's subject property pursuant to Section 44-53-520, Code of Laws of South Carolina (1976), as amended, on the basis that the subject property was purchased with proceeds derived from illegal drug transactions and was further used to facilitate distribution, sale, or trafficking in illegal controlled substances. The trial court considered the testimony and evidence and later ordered that the Defendant property be forfeited to the State of South Carolina.

Petitioner was a known drug dealer during the time he acquired the subject property. (R.p.99, line 9 - p.100, line 6; R.p.100, line 18 - p.101, line 8: R.p.101, line 23 - p.105, line 12; R.p.118, line 6 - p.120, line 11; R.p.121,

lines 9-10; R.p.122, line 11 - p.123, line 13; R.p.124, lines 10-11; R.p.125, line 10 - p.130, line 6; R.p.142, line 11 - p.143, line 19; R.p.144, line 20 - p.145, line 15). The State presented evidence that Petitioner purchased the subject property in cash, had title to the subject property transferred to an individual other than Petitioner, and made improvements to the subject property worth at least $25,000 in value. (R.p.109, line 3 - p.116, line 24). The record also reflects that Petitioner was earning millions of dollars in illegal drug transactions during the acquisition and improvement of the subject property and that Petitioner maintained control over the subject property during this period of time. In addition to showing that illegal substances were seized from the subject property, the State presented evidence that the subject property was purchased by Petitioner with

proceeds derived from illegal drug transactions. (R.p.99, line 9 - p.100, line 6; R.p.100, line 18 - p.101, line 8: R.p.101, line 23 - p.105, line 12; R.p.118, line 6 - p.120, line 11; R.p.121, lines 9-10; R.p.122, line 11 - p.123, line 13; R.p.124, lines 10-11; R.p.125, line 10 - p.130, line 6; R.p.142, line 11- p.143, line 19; R.p.144, line 20 - p.145, line 15).

The forfeiture of the subject property cannot be reasonably viewed as an excessive fine against Petitioner in light of the circumstances and the evidence presented at trial against the subject property. Furthermore, in Austin, supra, the United States Supreme Court ruled that the determination of whether a forfeiture is constitutionally excessive should be made by the trial court; the trial court was not afforded the opportunity to do so in this matter.

The forfeiture of Petitioner's property did not deprive Petitioner of anything to which he was legally entitled, because Petitioner purchased the subject property with drug proceeds. The drug proceeds were derived from Petitioner's criminal activity, and Petitioner had no legal right to those proceeds. Dawkins v. U.S., 883 F.Supp. 83 (E.D. Va. 1995). As a result of the forfeiture, Petitioner has merely been placed in the position which he held prior to launching his criminal drug activity. Furthermore, the forfeiture of proceeds cannot be considered punishment and is not subject to the Excessive Fines Clause of the Eighth Amendment. U.S. v. Wild, 47 F.3d 669 (4th Cir. 1995); U.S. v. Alexander, 32 F.3d 1231 (8th Cir. 1994). The forfeiture of the subject property merely parted Petitioner from the fruits of his criminal drug activity. Petitioner was not

punished, and the forfeiture of the subject property cannot be considered excessive and in violation of the Excessive Fines Clause of the Eighth Amendment.

## CONCLUSION

The Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

CHARLES MOLONY CONDON
Attorney General

* DONALD J. ZELENKA
Assistant Deputy Attorney General

JOHN S. SIMMONS
Chief, State Grand Jury

ANNE HUNTER YOUNG
Assistant Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3693

By: _____
ATTORNEYS FOR RESPONDENT

October 31, 1995
Columbia, South Carolina